

REMARKS

Claims 1-17 are pending and await action on the merits.

The Examiner has restricted the claims under 35 U.S.C. §121 into the following groups:

Group I, claims 1-6, drawn to an electrolyte composition, classified in class 252, subclass 62.2;

Group II, claims 7-13¹, drawn to a battery, classified in class 429, subclass 300; and

Group III, claims 14-17, drawn to a capacitor, classified in class 361, subclass 525.

Applicants elect Group I consisting of claims 1-6, with traverse. Applicants traverse for the following reasons.

The Examiner has restricted between the battery claims, the capacitor claims and the electrolyte composition claims based upon the following reasoning:

Inventions I and either II or III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP §806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP §806.04(h)). In the instant case, the intermediate product is deemed to be useful as either a battery electrolyte or a capacitor electrolyte and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants.

¹ It appears based on the Examiner's description of the subject matter of Groups II and III that the Examiner meant to include claim 13 with Group III. The Examiner is respectfully requested to clarify this matter in the next communication.

Applicants respectfully submit that the Examiner has **incorrectly** categorized the claims as being in the intermediate-final product relationship between Group I and either Group II or Group III.

Applicants respectfully submit that the subject matter of Group I and either Group II or Group III appropriately relate to one another as a "subcombination essential to combination". MPEP §806.05(c)(II) describes this relationship as follows:

AB_{sp}/B_{sp} No Restriction

If there is no evidence that combination AB_{sp} is patentable without the details of B_{sp}, restriction should not be required. Where the relationship between the claims is such that the separately claimed subcombination B_{sp} constitutes the essential distinguishing feature of the combination AB_{sp} as claimed, the inventions are not distinct and a requirement for restriction must not be made, even though the subcombination has separate utility.

Under this analysis, the electrolyte composition described in claims 1-6 is the subcombination "B_{sp}" and either the battery comprising the electrolyte composition (please note that claim 7 depends from claim 1) is the combination "AB_{sp}" or the capacitor comprising the electrolyte composition (please note that claim 13 depends from claim 1) is the combination "AB_{sp}". Here, the relationship between the claims is such that the separately claimed

subcombination "B_{sp}", the electrolyte composition, constitutes the essential distinguishing feature of the combination "AB_{sp}" (the capacitor or the battery). Thus, the inventions are not distinct and a requirement for restriction between claims 1-6 and either claims 7-12 or 13-17 must not be made.

In the event the Examiner is willing to rejoin either Group II or Group III with Group I, Applicants elect the combination of Groups I and II consisting of claims 1-12.

Drawings

This application has been filed with four sheets of drawings. However, the Examiner has not indicated whether the drawings are acceptable. In the next communication, Applicants respectfully request that the Examiner indicates whether the four sheets of drawings are acceptable.

Information Disclosure Statement (IDS)

Applicants timely filed IDSs on September 19, 2001 and July 7, 2003. The Examiner is respectfully requested to consider the references cited therein and provide a signed and initialed copy of the PTO-1449 forms indicating that all of the references have been considered in the next communication.

Priority Documents

Applicants note with appreciation that the Examiner has acknowledged that Applicants have filed the priority documents.

Conclusion

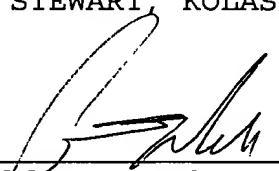
Early and favorable action on the merits is respectfully requested.


If the Examiner has any questions concerning this application, he is requested to contact Garth M. Dahlen, Ph.D. (#43,575) at the offices of Birch, Stewart, Kolasch & Birch, LLP.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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